

[2020] 113 taxmann.com 514 (Bombay)/[2019] 414 ITR 558 (Bombay)[04-06-2019]

INCOME TAX : Where in case of assessee, a contractor, Assessing Officer made addition in respect of two bills which were raised by assessee but not accounted for in its return even though it was following mercantile system of accounting, in view of fact that one of said bill was raised after termination of contract whereas nothing was received in respect of second bill because payer was in severe financial crisis, impugned addition was to be deleted



[2020] 113 taxmann.com 514 (Bombay)

HIGH COURT OF BOMBAY

Commissioner of Income-tax, International Taxation, Mumbai

v.

Bechtel International Inc.*

AKIL KURESHI AND S.J. KATHAWALLA, JJ.

IT APPEAL NO. 187 OF 2017

JUNE 4, 2019

Section 5 of the Income-tax Act, 1961 - Income - Accrual of (Construction activity) - Assessment year 2002-03 - Assessee was engaged in construction work - It was awarded a construction contract by DPC - Assessee filed return declaring certain taxable income - In scrutiny assessment, Assessing Officer made addition to assessee's income in respect of two bills raised by assessee but not accounted for in its return of income, even though it was following mercantile system of accounting - Tribunal noted that first bill was raised after termination of contract and same was not even accepted by DPC - So far as second bill was concerned, Tribunal noted that assessee could not receive any payment for a long time as parent company of DPC was in severe financial crisis - Tribunal thus applied theory of real income and deleted entire addition - Whether, on facts, impugned order passed by Tribunal did not require any interference - Held, yes [Paras 4,5 and 6] [In favour of assessee]

FACTS

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- The assessee-company was engaged in construction work. It was awarded a construction contract by DPC. For relevant assessment year, the assessee filed a return of income. While carrying out the scrutiny assessment of the said return, the Assessing Officer questioned the assessee about the non-inclusion of two amounts of Rs.26.47 crores and Rs.59.51 Crores, for which assessee had raised the bills, but not accounted for in its income.
 - The Assessing Officer rejected the assessee's explanation that the amounts had not accrued to the assessee and therefore, even on the basis of mercantile system of accounting, the same could not be offered to tax. The Assessing Officer was of the opinion that since the assessee had raised the bills, whether payments were made or not, would not be relevant in view of the fact that the assessee followed mercantile system of accounting. He thus added amounts in question to assessee's taxable income.
 - The Commissioner (Appeals) opined that amount of Rs. 59.51 crores could not have been brought to tax since the bill pertained to mobilization and site operation costs, which bill was raised after termination of contract. However, with respect to the sum of Rs.26.47 crores, the Commissioner (Appeals) did not grant relief primarily on the ground that the bill raised by the assessee pertained to construction work already carried out before the termination of the contract.
 - The Tribunal confirmed the view of the Commissioner (Appeals) with respect to the sum of Rs.59.51 crores on the ground that the bill was raised after the termination of the contract and the bill was not even accepted by the DPC. The income had therefore never accrued to the assessee.
 - With respect to the sum of Rs.26.47 crores, the Tribunal noted that the parent company of DPC was in severe financial crisis; the assessee could not receive any payment for a long time; eventually after delay of nearly four years, the assessee could recover only 8.58% of the total claim. *Inter alia* on such factors, the Tribunal applied the theory of real income and deleted the addition.

On revenue's appeal :

HELD

- The view of the Tribunal was correct. With respect to the larger amount of Rs.59.51 crores, the claim was for damages for premature termination of the contract. The bills were raised after the termination of the contract and the contracted party did not even accept the bills. With respect to the remaining amount of Rs.26.47 crores, the Tribunal has applied relevant facts and held that in view of the real income theory, no tax can be levied on the assessee at the relevant time.
- Any further examination of the issue would be wholly academic in nature since in any case, the assessee could have claimed the said amount by way of bad debts. In fact, such a claim was allowed, but in view of the further development, pursuant to the impugned decision taken

by the Tribunal, such claim was ordered to be adjusted. In the result, the revenue's appeal is dismissed. [Para 6]

Charanjeet Chanderpal for the Appellant. **Dr. Sunil M. Lala, Rohan Deshpande and Bhavya Sundesha** for the Respondent.

ORDER

1. This Appeal is filed by the Revenue to challenge the order of the Income Tax Appellate Tribunal. The following question is presented for our consideration : (i) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT erred in holding that incomes arising on account of contractual work performed before termination of contract and pendency of litigation and on account of demobilization and winding up of site operation costs have not accrued to the assessee where in fact the economic event on the basis of which these claims are made have already occurred during the year and the assessee has already raised invoices on these accounts ?

2. Brief facts are as under :

The Respondent is a Company engaged in construction work. For the Assessment Year 2002-03, the Respondent had filed a Return of Income. While carrying out the scrutiny assessment of the said Return, the Assessing Officer questioned the Assessee about the non-inclusion of two amounts of Rs.26.47 Crores (rounded off) and Rs.59.51 Crores (rounded off), for which Assessee had raised the bills, but not accounted for in its income. The Assessing Officer rejected the Assessee's contention that these amounts had not accrued to the Assessee and therefore, even on the basis of mercantile system of accounting, the same do not have to be offered to tax. The Assessing Officer was of the opinion that since the Assessee had raised the bills whether payments were made or not would not be relevant in view of the fact that the Assessee followed mercantile system of accounting. In Appeal, Commissioner of Income Tax (Appeal) granted partial leave to the Assessee. In relation to the amount of Rs.59.51 Crores, the Commissioner was of the opinion that the same could not have been brought to tax since the bill pertained to mobilization and site operation costs, which bill was raised after termination of contract. However, with respect to the sum of Rs.26.47 Crores, the Commissioner of Income Tax (Appeals) did not grant relief primarily on the ground that the bill raised by the Assessee pertained to construction work already carried out before the termination of the contract. We may however, record that to the limited extent of Rs.2.43 Crores, out of the said amount, the Commissioner granted relief on the ground that the same was already taxed in the earlier year. The Assessee carried the matter further before the Appellate Tribunal.

3. The Department also filed independent Appeal to the extent the decision of the Commissioner of Income Tax, (Appeal) were against the Revenue. The Tribunal by the impugned common Judgment allowed the Assessee's Appeal and dismissed the Revenue's Appeal.

4. The Tribunal noted the peculiar facts that the Assessee was awarded the contract for construction work of one Dabhol Power Company (DPC). It was the project undertaken by Enron International, which had run into several legal disputes. The Tribunal confirmed the view of the CIT (Appeals) with respect to the sum of Rs.59.51 Crores on the ground that the bill was raised

after the termination of the contract and the bill was not even accepted by the DPC. The income had therefore never accrued to the Assessee.

5. With respect to the sum of Rs.26.47 Crores, the Tribunal noted that the parent Company was in severe financial crisis; the assessee could not receive any payment for a long time; eventually after delay of nearly four years, the Assessee could recover only 8.58% of the total claim. Interalia on such factors, the Tribunal applied the theory of real income and deleted the addition.

6. We may note that in the meantime, the Assessee had also in the later year, claimed same amount by way of bad debts. The Tribunal while giving relief to the Assessee ensured that such claim of bad debts would stand deleted. We are broadly in agreement with the view of the Tribunal. With respect to the larger amount of Rs.59.51 Crores, the claim was for damages for pre mature termination of the contract. The bills were raised after the termination of the contract and the contracted party did not even accepted the bills. With respect to the remaining amount of Rs.26.47 Crores, the Tribunal has applied relevant facts and held that in view of the real income theory, no income tax can be levied on the Assessee at the relevant time. Any further, examination of the issue would be wholly academic in nature since in any case, the Assessee could have claimed the said amount by way of bad debts. Infact, such a claim was allowed, but in view of the further development, pursuant to the impugned decision taken by the Tribunal, such claim was ordered to be adjusted. In the result, the above Income Tax Appeal is dismissed.

SUNIL

*In favour of assessee.